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Antonio Rafael de la Cova*

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INTRODUCTION

On Thanksgiving Day 1999, around 8:30 A.M., two south Florida sports fishermen, 39-year-old Donato Dalrymple and his cousin, found five-year-old Elián González nestled in a tire inner tube floating three miles off the Fort Lauderdale coast. When the U.S. Coast Guard arrived, Dalrymple refused to hand over the boy at sea fearing that he would be returned to Cuba under the Wet Foot/Dry Foot Policy because he had not reached land. The fisherman reluctantly gave up Elián after being assured that the child would be taken ashore for medical reasons, which would make him eligible to stay. Elián was rushed to a hospital and treated for dehydration and minor cuts.

Hours earlier, boaters had rescued 22-year old Arianne Horta Alfonso and her 33-year-old boyfriend Nivaldo Fernández Ferrán who stated that they were part of a group of fourteen refugees, including Elián and his mother, Elíbet Brotons Rodríguez, and her common-law husband, 25-year-old Lázaro Munero García. They had left Cárdenas, Cuba, four days earlier on a 17-foot boat built with aluminum tubes and a 50hp outboard engine, towing three Russian truck tire inner tubes. After two days, the vessel capsized in the Gulf Stream during a storm and all others perished.

I. THE CUBAN ADJUSTMENT ACT OF 1966 AND ITS CONSEQUENCES

During the previous four decades, nearly half-a-million Cubans had sought political asylum in the United States. The Camarioca boatlift of 1965 and the subsequent Freedom Flights until 1973 brought 265,000 exiles; the Mariel exodus of 1980 added another 125,000; and during the Cuban rafter crisis of 1994, 35,000 refugees headed for the U.S. in one month. Under the terms of the Cuban Adjustment Act of 1966, nearly all Cuban refugees who enter the United States without a visa are paroled and after one year can

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3 Id.
7 de Valle, supra note 5; Morrison, supra note 6; Michael John, Betrayal of Elian Gonzalez 15–16 (2000).
apply for permanent resident status. Both nations reached an immigration accord in 1994 requiring Washington to annually issue 20,000 lottery visas to Cubans and under the Wet Foot/Dry Foot Policy, emigrants who reach the mainland can stay while those intercepted by the U.S. Coast Guard at sea are returned to Cuba.

The Immigration and Naturalization Service (INS) granted Elián a temporary deferral of his inspection and released him to his great-uncle Lázaro González, a 49-year-old automobile mechanic, who resided with his wife Angela and their 21-year-old daughter Marisleysis at 2319 NW Second Street in Miami’s Little Havana. The relatives telephoned their family in Cárdenas, advising them to get hardship visas and travel to Miami. According to the Miami relatives, their Cárdenas kin “started preparing their papers.” They called back the next day and said “some functionary of the government would be coming to get the boy.” Elián became “a symbol to many exiles of conditions on the island so economically and politically oppressive that a mother would risk the life of her child to leave.” In response, Cuban Communist leader Fidel Castro met with Juan Miguel González and a diplomatic note was sent to the U.S. State Department on November 27th declaring that the father was demanding Elián’s immediate repatriation. The INS issued a press release on December 1st that, according to attorney José García Pedroza, indicated: “This is a custody dispute for the state courts to decide based on a single standard. What is in the best interest of the boy?”

### A. Fidel Castro’s Ultimatum to the United States

On December 5th, Elián’s sixth birthday, Castro angrily responded on state-run television with an ultimatum to the United States to return Elián to

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his father “within 72 hours.” He forewarned: “I hope that Cuba’s numerous friends in the United States and in other parts will begin to organize committees for the release of the child kidnapped by the United States. Heaven and earth will be moved.” Castro promised a “battle for world opinion” and threatened mass protests and a boycott of upcoming U.S.-Cuba migration talks scheduled for December 13th. The latter would disrupt implementing the U.S.-Cuba accords to prevent another massive refugee exodus. U.S. State Department spokesman James P. Rubin reportedly noted that “the case was referred to the Florida state courts because they take precedence in custody disputes.” He emphasized, “Our first priority is the welfare of the child. We will not respond to threats made against the United States through the press.” Deputy White House press secretary Barry Toil declared, “This is an issue that needs to be hammered out through the appropriate legal channels.”

Attorney Spencer Eig, a former INS lawyer representing Elián’s Miami family, issued an invitation to the child’s father to visit them and settle the custody dispute in state family court. Juan Miguel González refused to go and insisted his “kidnapped” son be sent to him. Castro “branded Florida judges mercenary and venal, corrupt to the very marrow of their bones,” Ricardo Alarcón, president of the Cuban National Assembly and Havana’s chief negotiator with the U.S., declared, “It’s not a matter of custody. It’s a matter of kidnapping a child.” Alarcón stressed that “[t]here was nothing to negotiate, there was nothing to discuss in any court or any other
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forum.” He warned that if Elián was not repatriated, Cuba would not attend the upcoming migration meeting.27 State Department spokesman James Foley replied, “We do not accept the ultimatum issued by Fidel Castro. This is not conducive to resolving this case in the appropriate humanitarian way.”28

In Havana, regime-choreographed demonstrations, ranging up to 300,000 people, were held nightly in front of the U.S. Interests Section.29 Government buses brought protesters from 100 miles away for what was called “the march of the combatant nation”30 demanding Elián’s return. Large billboards appeared throughout the capital and in front of the U.S. diplomatic mission with images of a gloomy Elián that read: “Return Elián to his country.”31 The photo and logo were also displayed on thousands of T-shirts that the regime distributed free to the marchers. Castro later admitted spending $2 million on the propaganda items.32 The case was virtually the only subject covered by Cuban news media.33

Cuban children unknown to Elián “have wept for him, given speeches for him, sang songs imploring him to return.”34 Elián’s primary school desk in Cárdenas became a shrine, “almost a religious icon.”35 His classmates wrote to President Bill Clinton that what he was doing was unjust.36 The school had a sign-in book for visitors entitled “For the Freedom of Little Elián. Fatherland or Death. Fidel Castro.”37 The Communist Party daily Granma heralded: “Never in the history of Cuba has there been a similar national mobilization, moved by indignation against the rude and repugnant crime committed against a child.”38 Former INS general counsel Grover Jo-

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27 Id.
33 See Cries for Elian’s Return, Cafes, supra note 31.
35 Id.
37 Id.
seph Rees declared that Elián had been “turned into a political pawn.” He stated, “Fidel had dinner with the father and the two sets of grandparents. How often does that happen?”

B. The Clinton Administration Reverses its Family Court Decision

On December 7, 1999, the Clinton Administration reversed the previous INS family court decision and recognized that Elián’s father could assert his custody claim. They also agreed to Castro’s request of immediately deporting six Cubans who had hijacked a docked fishing boat to Florida. Critics believed that the change was due to a U.S. government fear that Cuba in reprisal would “unleash another flood of refugees.” Castro then rectified in a public speech that he did not intend to humiliate the United States and that “we have not formulated an ultimatum.” Cuban officials claimed that the 72-hour notice was advice, not a deadline.

The next day, President Clinton stated that there were difficult decisions to be made in the Elián case: “I don’t think that politics or threats should have anything to do with it and, if I have my way, it won’t.” Clinton suggested that, for the child’s sake, officials of both nations “try to take as much political steam out of it as possible.” The president claimed that “it wasn’t his decision” to decide Elián’s fate. However, there was a precedent during the Reagan Administration when Attorney General Edwin Meese issued a “departure control order” allowing 12-year-old Ukrainian Walter Polovchak to stay in America against the wishes of his parents, who were returning to the Soviet Union.


40 Id.


43 DeYoung, supra at 41.

44 U.S., Cuba Tone, supra note 29.

45 Id.


47 U.S., Cuba Tone, supra note 29.

48 Id.

49 Mufson, supra note 46; ‘Littlest Defector’ of 20 Years Ago Understands the Plight of Elián, WASH. TIMES (Feb. 7, 2000) [hereinafter Littlest Defector], available at http://www.latinamericanstudies.org/elian/plight.htm, archived at http://perma.cc/G2WA-HC9W. Walter Polovchak turned eighteen before a final decision was issued and he was allowed to remain in America. The ruling held that parents who are foreign nationals cannot take their own child from America if that minor objects, unless the youngster first receives a hearing to determine if their life in another country is in their interests; see Polovchak v. Meese III, 774 F.2d 731, (7th Cir. 1985). Polovchak eventually reconciled with his parents and every other
In previous Cuban custody cases, a woman fleeing the island in 1969 had managed to get her 2-year-old daughter over the fence of the U.S. Guantanamo Naval base to an awaiting relative before Cuban guards seized her and her three-year-old daughter.\textsuperscript{50} The mother was imprisoned for five years and the child left behind was given to her father.\textsuperscript{51} The girl who escaped went to live with her great aunt and uncle and their five sons in Hialeah, Florida.\textsuperscript{52} Her father sued for custody but a Florida family court ruled that the child was to stay in the Miami suburb.\textsuperscript{53} In another incident in February 1980, 14-year-old Odalys Valdés, daughter of a Cuban Communist Party official, arrived in Florida in a hijacked boat with her boyfriend.\textsuperscript{54} She was placed in foster care and after a two-year legal fight in a Miami circuit court, her parents and the Castro regime dropped their lawsuit seeking her return.\textsuperscript{55}

On December 9, 1999, U.S. Deputy Attorney General Eric Holder held a press conference and invoked a legal loophole allowing the Justice Department, instead of Florida family courts, to decide Elián’s future.\textsuperscript{56} Holder stated that INS, a branch of the Justice Department, would determine the boy’s destiny, since Elián “was taken directly to a hospital and therefore was never formally paroled into the country.”\textsuperscript{57} He affirmed that “the law favored Elián’s return to Cuba as long as the father could prove his relationship and that he was a suitable parent.”\textsuperscript{58} INS spokesman Mike Gilhooly indicated that Elián was paroled in for a deferred inspection that had not occurred. It was set for the end of December and INS was “not legally obliged to let the boy remain in the United States because he was given only temporary entry after his rescue.”\textsuperscript{59}


51 Id.
52 Id.
53 Id.
57 Id.
58 Id.
59 Id.
sure that the interests of family reunification don’t cost young Elián the freedoms for which he has already paid so dearly.” 60 A U.S. diplomatic note to Cuban officials indicated how Juan Miguel González could exercise his parental rights and present documentation to an INS official willing to travel to his home in Cárdenas.61 Elián’s parents had divorced when he was two years old and the mother had legal custody.62 The father rejected appearing before a Florida family court and boasted that Fidel Castro’s stern talk made Americans “tremble.”63 He telephoned Elián twice daily but declined to talk to the Miami family after the regime installed a speaker phone in his home.64 Marisleysis, who had become a surrogate mother, said that the father “sometimes demand[ed] that Elián sing Cuban revolutionary songs.” 65

The attorneys for the Miami family indicated that “they would petition a federal court to block Elián’s return to Cuba on the grounds that the boy would live a better life under America’s democratic system than under Castro’s communist regime.”66 On December 10th, they filed “a routine political asylum plea” with INS and an injunction with the U.S. District Court to block the child’s repatriation.67 The document indicated that Elián would be persecuted in Cuba because his two great-uncles and his stepfather had been imprisoned by the Communist regime that had also harassed and intimidated Elián’s mother.68 It added that the boy would be “subjected to forced indoctrination in the tenets of communism.”69 A year earlier, the INS had issued new asylum guidelines for children under the age of eighteen, who “may experience persecution differently from adults and may not present testimony with the same degree of precision as adults.”70 The “political exploita-

61 See Rosenberg & de Valle, supra note 42.
67 Lawyers File, supra note 66; Rosenberg & Weaver, supra note 66.
68 Id.
69 John, supra note 7, at 17–18.
tion” of a child was part of the guidelines for granting asylum.71 The lawyers also petitioned the Family Division of the Circuit Court for Miami-Dade County to declare the Miami family as Elián’s official guardians, because it would be in his best interest to grow up in the United States.72 In response, Castro warned Clinton, “I don’t think you will make [the] mistake” of keeping Elián in America.73

The U.S.-Cuba migration talks began in Havana on December 13, 1999, after the government temporarily ended the daily street protests.74 That day, two INS officials interviewed Juan Miguel González in his Cárdenas home and promised that “they would get the custody process going quickly.”75 Elián’s father “read from a handwritten statement and asked that any application for admission to the United States on his son’s behalf be withdrawn.”76 The immigration agents invited him to “apply for a visa to the United States to see Elián now” and he replied, “No, I’m not interested.”77 González then filled out a Spanish-language questionnaire and on the section “Do you want to go to the United States to see Elian now, yes or no?” he checked no.78 INS began a high-level review of the case the next day. Cuban exiles in South Florida denounced that “the Clinton administration had cut a secret deal with Havana to return the boy.” Marisleysis wondered whether political pressure from Castro had kept the United States from “giving Elián the proper human rights.”79

C. A Highly Unusual Secret Agreement to End a Hostage Standoff

Five days after the immigration meeting in Havana, the U.S. Government ended a six-day hostage standoff in the St. Martin Parish jail in Louisiana by secretly negotiating with Cuba to settle the deportation demands of six 1980 Mariel boatlift criminals holding the warden, a female guard and five female inmates. According to Justice Department officials, the “highly

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71 Id.
72 Id.
77 Id.
78 John, supra note 7, at 120; Gonzalez Ex Rel. Gonzalez v. Reno, 86 F. Supp. 2d 1167 (S. D. Fla. 2000); Transcript of 11th Circuit, supra note 76.
unusual” agreement to grant the prisoners’ ultimatum and get Castro to accept it "was appropriate in this case because it coincided with United States interests. Attorney General Janet Reno was closely involved in the decision, aides said, as were officials in the White House and the State Department."80 Reno had been “monitoring the standoff constantly.”81 The settlement received President Clinton’s final approval. The convicts were flown to Havana on a U.S. government jet on December 21, 1999. State Department spokesman James Foley stressed at a press conference that there was absolutely no link between the classified agreement and the Elián case. Two days later, the INS asylum interview scheduled with Elián was rescinded by the government.82

INS attorney Rebeca Sánchez Roig then wrote a memo that was emailed on December 29th, summarizing a conference call on the Elián case that involved several INS employees and Commissioner Doris N. Meissner.83 The document noted that some INS officials believed that Elián’s father had previously applied in the U.S. Interests Section in Havana for an immigrant visa through the annual lottery. It also cited allegations that the Cuban government had coerced Juan Miguel González since “his calls to his relatives in Little Havana might have been monitored by the Cuban government.”84 The two-page memo indicated that if coercion was demonstrated, the INS could accept the asylum application filed on Elián’s behalf and advised that “there is no prohibition on age to child filing application.”85 The next day, Meissner ordered the destruction of all copies of the document.86 Sánchez Roig printed the memo before deleting it and made a written annotation on it regarding Meissner’s orders, including that “no more discussions related to Elián be committed to writing.”87 Meissner, the daughter of Jewish

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85 John, supra note 7, at 28–29.

86 Group Says INS, supra note 84.

87 Chardy, supra note 83.
German immigrants, apparently had already determined Elián’s fate, in all likelihood obeying higher orders.  

II. POLITICAL INTERVENTION

On New Year’s Eve, INS officials met with Juan Miguel González in Havana and “asked the Cuban government to help arrange for the boy’s father to travel to Miami to pick him up.” Elián’s father provided statements contradicting what he had told them two weeks earlier. He first described Lázaro Munero as a “nice man who would often join Elisabet in visiting González’s home for dinner and special feasts.” González now purported having heard that Munero forced a reluctant and tearful Elián to get on the boat at knife point. The U.S. government plan was to give González an emergency visa, have him brought to the home of his Miami relatives where he would receive legal custody of Elián, and allow both of them to leave the country. Fidel Castro and González rejected the offer and demanded the unilateral repatriation of the boy. An INS hearing scheduled for January 21, 2000, which had been previously postponed twice, would determine whether Elián would be allowed to stay in America beyond his temporary status. The boy’s attorneys had unsuccessfully lobbied Reno to quickly hold the asylum hearing. They argued that “While Elián’s father may be a fit parent, Communist Cuba is an unfit place to bring up a child.”

A. The U.S. National Council of Churches and ADM Interfere

On January 3, 2000, the U.S. National Council of Churches (NCC), a liberal theological organization which for decades had actively opposed the U.S. embargo on Cuba, got involved in the Elián case when its General Secretary, the Reverend Joan Brown Campbell, visited the boy’s father and grandparents in Cárdenas and “promised to press the U.S. government to return Elián to his father.” An NCC board member, Dwayne Andreas,
CEO of Archer Daniels Midland (ADM), interested in “opening agricultural facilities in Cuba,” also used his influence to have the boy repatriated.97 The next day, Elián enrolled in the bilingual Lincoln-Martí Elementary School in Little Havana with free tuition to continue his first grade studies.98

INS Commissioner Meissner declared on January 5th that Elián “belongs with his father,” must be reunited with him by January 14, and rejected his asylum application.99 She said that Juan Miguel González was “the sole legal authority to speak on behalf of his son.”100 President Clinton and U.S. Attorney Reno supported the decision.101 Meissner refused to speculate on what her agency would do if the father requested asylum upon arriving in America.102 Miami family attorney Spencer Eig immediately wrote to Reno and Meissner requesting a review of the case to assure Elián of due process of law.103 Reno quickly declined to reverse the decision.104 In response to the INS ruling, in Cuba “3 million people rallied for Elián’s return.”105 The Miami relatives requested from Congressional representatives that visas be given to the entire family in Cuba “so they can decide freely on U.S. soil whether to take the child back to the island.”106 Florida Democratic Senator Bob Graham called on family courts to handle the case.107 He asked Reno to defer enforcing the INS ruling pending “congressional review” that would include “possible changes in the law.”*108
B. Three U.S. Presidential Candidates Opine

Vice President Al Gore, on the campaign trail for the 2000 presidential election, declared that “he [was] not convinced the father was not coerced by the Castro regime.” He added that he would “like to see the dispute adjudicated in our courts” and that he wasn’t sure the INS had “the experience and expertise to really address” what was best for the child. Cuban American Democratic Representative Bob Menéndez of New Jersey warned Gore: “You will be tied to the consequences of how the administration handles this” after the vice president had received “huge financial support from Cubans in Miami.”

During a nationally broadcast debate by Republican presidential candidates, Texas Governor George W. Bush stated that “[t]he Clinton administration looks like they may have done a deal with Fidel Castro” regarding Elián. Candidate Steve Forbes denounced that the boy “is Bill Clinton’s human sacrifice to Fidel Castro, and it’s a disgrace.”

On January 10, 2000, Miami-Dade Circuit Judge Rosa Rodríguez, a native of Puerto Rico, granted emergency custody of Elián to his great-uncle Lázaro González until a full hearing could be held on March 6th so that his father and the Miami relatives could determine the boy’s future. Lázaro alleged that if “Elián is returned to Cuba, he would be subjected to imminent and irreparable harm, including loss of due process rights and harm to his physical and mental health and emotional well-being.” The judge ruled that Elián “is threatened with harm if he goes back to Cuba and its totalitarian oppression.” She urged his father to be present at the hearing or his “failure to appear may result in a decision adverse to his interests.” Miami INS spokesman Mike Gilhooly responded to the judge’s ruling, “We have no plans to take charge of him, and we have no plans to

109 Pressley & DeYoung, supra note 104.
113 Id.
114 Acle, Chardy & Weaver, supra, note 63.
115 Id.
117 INS: No Plans, supra note 111.
forcibly remove him from the home.”\textsuperscript{118} The next day, the INS announced that “it would not enforce its Jan. 14 deadline and would probably allow the boy to remain in this country until the hearing on March 6.”\textsuperscript{119} The INS was reluctant to enforce its order, foreboding that a forceful removal of Elián would “cause a major civil upheaval in Miami, have severe political consequences and traumatize the child.”\textsuperscript{120} In contrast, Juan Miguel González stated that “he would be willing for Elián to be forcibly separated from the Miami relatives.”\textsuperscript{121}

Reno wrote a letter to the Miami family lawyers on January 12th indicating that “a Florida state court had no jurisdiction in the case.”\textsuperscript{122} She publicly stated that “any challenge to the INS decision to return Elián to Cuba would have to be carried out in federal court.”\textsuperscript{123} The Attorney General offered a long rebuttal to the lawyers’ contention that INS guidelines mandate a full hearing for Elián and “reaffirmed her belief that the law required that Elián should be returned to his father in Cuba.”\textsuperscript{124} Reno believed that the boy was not “at risk of torture or persecution if returned to his father” and did not address the issues of Communist indoctrination and loss of freedom.\textsuperscript{125} She then publicly declared, “‘My hope is that people will look at this little boy and get him into a situation where he can live a normal life without television cameras and the world his face[.]’”\textsuperscript{126}

The Miami family attorneys filed a second asylum request for Elián on January 12th but the INS rejected it, affirming that only the father could act on behalf of the child.\textsuperscript{127} One of the lawyers, José García-Pedrosa, denounced that “the custody of the father has been taken over by the Cuban government.”\textsuperscript{128} Juan Miguel González was no longer working as a park

\textsuperscript{118} Id.


\textsuperscript{121} Id.


\textsuperscript{124} Lewis, supra note 122.

\textsuperscript{125} Attorney General Reno Letter, supra note 123.

\textsuperscript{126} Reno Calls for Speedy Resolution, supra note 123.


\textsuperscript{128} Suarez, supra note 14.
gatekeeper. He and his family were whisked away to a government safe house.\footnote{Father Has Dropped Out of Sight, MIAMI HERALD (Jan. 12, 2000), available at http://www.latinamericanstudies.org/elian/sight.htm, archived at http://perma.cc/8RH2-Q9RY.}

C. The International Campaign

The Elián saga grabbed international headlines and “divided millions of people around the world.”\footnote{Id.} The boy was featured on the cover of Time magazine on January 17th under the heading “Where Does He Belong?” Castro sent his Foreign Minister Felipe Pérez Roque on a European tour to rally international support for Elián’s repatriation.\footnote{Federal Petition for Six-Year-Old Elian Expected by Midweek, CNN (Jan. 17, 2000), available at http://www.latinamericanstudies.org/elian/midweek.htm, archived at http://perma.cc/XVA4-MC9B.} Pérez had an audience with Pope John Paul II on January 17th and claimed that His Holiness “was very worried” about the boy’s separation from his father but the Vatican’s communiqué on the meeting did not mention Elián.\footnote{Id.} The minister announced, “‘Our mobilizations will continue . . . [n]o one should make the mistake to think that we are going to get tired.’”\footnote{Olkon, supra note 130.} In Havana, the government began construction of the José Martí Anti-Imperialist Platform, a light and sound stage with an audience capacity for more than 100,000 people in front of the U.S. Interests Section, that institutionalized anti-American demonstrations.\footnote{Id.} Cuba’s two state-run television stations every weekday evening had a two-hour round-table discussion, with six or seven panelists and Castro stage-managing the broadcast from the live audience, regarding the latest developments in the Elián case.\footnote{Randal C. Archibold, Video for Elian is Called Letter from Home, N.Y. TIMES (Apr. 28, 2000), available at http://www.nytimes.com/2000/04/28/us/the-elian-gonzalez-case-cuba-video-for-elian-is-called-letter-from-home.html.}

On January 19th, Elián’s Miami family filed suit in federal court against Reno and Meissner, accusing them of violating Elián’s due-process rights.\footnote{Id.} They asked the court to order the INS to give the child a twice-denied political asylum hearing made on his behalf by his great-uncle Lázaro González.\footnote{Id.} The defendants insisted that Elián could not have the inspection
because his legal guardian, his father, does not want the hearing.” 138 Eric Holder had his policy wing lawyers “directing the strategy planning and analysis, and briefing Reno frequently” on the Elián case. 139

D.      Elián’s Grandmothers are Escorted by a Spy Handler

Two days later, Elián’s grandmothers, Mariela Quintana and Raquel Rodríguez, left Havana for New York, instead of Miami. 140 They were accompanied by the Rev. Pablo Odén Marichal Rodríguez, executive secretary of the Cuban Council of Churches and deputy of the Cuban National Assembly, and an NCC delegation on a chartered six-seat Lear jet. 141 Quintana had a power of attorney to represent her son Juan Miguel González. 142 The group was headed by the new NCC general secretary the Reverend Bob Edgar, a former Pennsylvania representative, the Rev. Joan Brown Campbell, and the organization’s director for Latin America and the Caribbean, the Rev. Oscar Bolioli. 143 The NCC had “open-ended permission” from the Clinton Administration for “humanitarian missions” in Cuba. 144 The State Department Cuba Desk, interested in continuing their diplomatic talks with the Castro regime, had previously discussed the trip with Meissner, who rejected that the INS should act as facilitator for the grandmothers. 145 The State Department wanted the INS “to have a daily conference call to coordinate Press Guidance and communications with the Cubans.” 146 Miami relatives said they would “welcome a visit by [the grandmothers]” provided they were not accompanied by NCC or Cuban agents but “[would] not allow them to take the boy back to Cuba before the federal court rules in the case.” 147

Elián’s grandmothers were soon escorted by NCC leaders and the Rev. Marichal to a 45-minute meeting in Washington with Reno and Meissner and returned to New York on chartered aircraft. A letter they handed Reno was later distributed by the NCC to the media. The U.S. Attorney told them


139 Rosenberg, supra note 138.


141 Id.


144 John, supra note 7, 30–31.

145 Id.

146 Viglucci & Márquez García, supra note 144; Elián’s Grandmothers Depart, supra note 140.
that the matter was in federal court which made it impossible for Elián to leave Florida. The grandmothers wept and disparaged Elisabet Broton’s common-law husband as “a violent person . . . a crook.”148 They said the Miami family “made a business out of the child.”149 The grandmothers requested to meet with President Clinton, but the White House referred them to Reno’s office as “the proper place to address their concerns.”150 The exile relatives invited the grandmothers to dinner at their home to “see where Elián sleeps, what he eats, who he plays with and how much love and caring he receives in the home.”151

Five NCC members flew the grandmothers to Miami on a Lear jet but when their demand for a private meeting with the boy on neutral ground without the Miami relatives was not met, they returned to the New York home of Dr. Campbell. A Cuban security team headed by José Imperatori, Second Secretary of the diplomatic mission at the capital and a spy handler, escorted the grandmothers.152 When Reno was asked if she was concerned that the grandmothers’ visit was controlled by Cuban officials, she replied, “I think that is something that they have got to deal with.”153 The INS then ordered for Elián to appear at the Miami Beach home of Barry University President Sister Jeanne O’Laughlin on January 26th to meet his grandmothers. His father then sent a letter to the grandmothers, published in Havana newspapers, forbidding them to visit their Miami relatives.154

Consequently, the grandmothers refused to see the Miami family when they met with Elián at the O’Laughlin home for ninety minutes. The nun later recalled that when the reverends Marichal and Edgar entered the room, the grandmothers “were cold and frightened” and became “nasty.” Elián was shown a family photo album and letters from his Cuban schoolmates. He responded that “he had a different school and a different teacher and wasn’t interested in his old school.” The grandmothers then left by helicopter to the airport without commenting and headed back to Washington. Sister O’Laughlin, after perceiving their paranoia and mistrust, believing it was due to pressure from the Cuban regime, said that she now thought that Elián “would live in fear and without freedom if he were sent back to Cuba.” She questioned, “Could we send the boy back to a climate that may be full of fear without at least a fair hearing in a family court?”

O’Laughlin went to Washington twice to lobby her close friend Janet Reno and Meissner “that Elián’s future can be decided by a court that rules on matters of child custody” but failed to sway them. She then wrote an opinion piece in the New York Times stressing how she saw that Elián had transferred his maternal love to his cousin Marisleysis and “watched the grandmothers’ Cuban escort keep close telephone contact with Havana during and after the visit . . . .” Álarcón described O’Laughlin’s behavior as “pure Nazi fascist tactics.”

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162 O’Laughlin, supra note 160.
The next day, January 27, 2000, the U.S. Department of Justice filed an 85-page motion, along with hundreds of pages of supporting documents, responding to the Miami family’s suit in federal court. It argued that under U.S. and international law only Elián’s father could represent the boy and the case should be dismissed. A hearing for oral arguments was set for February. Psychiatrist Charles Krauthammer presaged in the Washington Post that if returned, Elián would be an icon and political commodity for Castro and not have a quiet life with his father. “Elián will be raised to be a model Fidelist, a vindication of the revolution . . . subject to far more indoctrination, far more surveillance than even the average Cuban subject.” In contrast, Cuban officials purported that “there are no plans to parade the boy when he returns.”

Elián’s grandmothers returned to a heroine’s welcome in Havana on Sunday, January 30th. The sixteen-mile “‘caravan of dignity’” route “was lined with thousands of cheering Cubans responding to a government call to turn out in appreciation” for them. Juan Miguel González rode with them “in a convertible as they waved at the crowds of hundreds of thousands of people waving Cuban flags.” The women spoke at a rally in the Convention Palace with Fidel Castro present. Paternal grandmother Mariela Quintana told a Cuban reporter afterward that during the Miami visit she did some “‘mischievous things’” to make Elián talk. She wanted to see “‘if he had no little tongue’” and said, “‘I took it out of his mouth, I bit it.’” Quintana admitted, “‘I even opened up his zipper’” to see his penis and asked him “‘[l]et me see, let me see . . . if it has grown’” in just two months. The Miami relatives were dumbstruck by this abnormal behavior
and assumed that the grandmothers were obeying instructions to search the boy “to see if he was wired, if he was bugged.”\footnote{Id.; de Valle, supra note 171.}

On February 18, 2000, the INS issued a statement indicating that they had informed Juan Miguel Gonz´alez that they remained “fully committed to reuniting him with his son Eli´an as soon as possible, consistent with legal procedures.”\footnote{GUERRA, supra note 100, at 49.} Six days later, attorneys for the Miami family presented in federal court numerous sworn statements about the conditions Eli´an would be subjected to if repatriated. One motion said that “‘Although Eli´an would return to Cuba a ‘hero’ in the eyes of the Cuban government, returning Eli´an to such a cauldron of repression, double-speak and forced political ideology would be a grave injustice.’”\footnote{Jay Weaver & Elaine de Valle, Kin Says Father Wanted Life Here, MIAMI HERALD (Feb. 25, 2000), available at http://www.latinamericanstudies.org/elian/kin.htm, archived at http://perma.cc/LSN7-D99C.} An affidavit from Dr. Marta Molina, who was a psychologist in Cuba for two decades before arriving in America six months earlier, said that Eli´an would be “‘immediately taken into seclusion away from the mainstream, to reindoctrinate him . . . He will be indoctrinated to believe that in the United States he was very unhappy,’” and this “would include his forced repudiation of his mother, stepfather and Miami relatives.”\footnote{Id.}

In early March, the NCC used ADM contributions to hire Gregory B. Craig, a $400-an-hour Washington attorney, who represented President Clinton during his impeachment and trial due to the Monica Lewinsky sex scandal.\footnote{EISLER, supra note 97, at 235; Jerry Seper, Cost of Elian Saga Keeps Increasing, and There’s No End in Sight, WASH. TIMES (Apr. 27, 2000), available at http://www.latinamericanstudies.org/elian/cost.htm, archived at http://perma.cc/KZL8-5ZXJ.} Craig was a senior aide to Secretary of State Madeleine Albright and a former top foreign policy advisor to Senator Edward Kennedy. He met in Havana separately with Fidel Castro and Juan Miguel González. Craig was allowed to represent the latter after assuring Castro that “Juan Miguel would not embarrass him by defecting or asking for political asylum.”\footnote{Gregory B. Craig attended Yale Law School at the same time as Bill and Hillary Clinton, with whom he had a long-time friendship. In 1986, he traveled to Cuba on behalf of Ted Kennedy to negotiate the release of the last two Bay of Pigs prisoners, EISLER, supra note 97, at 235–38; Karen DeYoung, Former Clinton Lawyer to Represent Elian’s Father, WASH. POST (Mar. 9, 2000), available at http://www.latinamericanstudies.org/elian/lawyer.htm, archived at http://perma.cc/D8HV-7NJ6; Frank Davies, Washington Lawyer Becomes Key Player in Case, MIAMI HERALD (Apr. 6, 2000), available at http://www.latinamericanstudies.org/elian/lawyer2.htm, archived at http://perma.cc/VCW7-WK3G; GUERRA, supra note 100, at 62.} Back in Washington, Craig announced that the father “‘is prepared to come to the United States to take custody of his son and will do so at the earliest possible moment.’”\footnote{Andres Viglucci, Elian’s Dad Hires Ex-Clinton Attorney, MIAMI HERALD (Mar. 10, 2000), available at http://www.latinamericanstudies.org/elian/attorney.htm, archived at http://perma.cc/CS8P-XSU2.}
III. THE DEPARTMENT OF JUSTICE CHANGES TACTICS

Lawyers for the Department of Justice went back to federal court on March 14th to file motions with a change of tactics. They now claimed that Reno did not have to consider Elián’s asylum application because his father, the only legal guardian, never requested it.181 The Miami lawyers reiterated that the Refugee Act of 1980 “makes the right to petition for asylum available to all aliens who are physically present in the United States regardless of status, and without limitation as to age or a parent’s consent.”182 A week later, U.S. District Judge Kevin Michael Moore did not rule from the bench but posted his fifty-page decision on the Internet.183 He opined that Elián was too young to comprehend the asylum application and that to exclude the father as his legal representative would have required proof that he abused the child, which was never presented.184 The judge stated that “each passing day is another day lost between Juan González and his son” and ruled that the Attorney General has the discretion to grant asylum and decide who could speak for Elián.185 In a televised speech, Fidel Castro “lavished praise” on Judge Moore for his decision.186 Attorneys for Elián’s family in Miami insisted that Elián “would be psychologically harmed” if returned to Cuba and filed a brief with the 11th U.S. Circuit Court of Appeals in Atlanta.187

The next day, Reno met in her office with Gregory Craig and afterwards issued a statement saying in part “‘I believe it is time for Elián to be reunited with his father’” and that “immigration officials could legally take the boy at any time,” without specifying a time frame.188 The Elián case, a

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182 Id.
184 Bragg, supra note 183.
185 The Lawyers Committee for Human Rights worried that Judge Moore’s decision gave government bureaucrats too much power to refuse considering asylum applications from children against the wishes of their parents, especially those fleeing female genital mutilation. Gonzalez Ex Rel. Gonzalez v. Reno, 86 F. Supp. 2d 1167 (S.D. Fla. 2000); Bragg, supra note 183.
187 Elián’s Relatives Appeal, supra note 183.
recurrent issue on the presidential campaign trail, prompted both front-runners, Al Gore and George W. Bush, to reiterate calls for the boy’s custody to be settled in family court. Gore stated, “’The child should never have been put in a position where the choice is his freedom or his father. The real fault here lies with Fidel Castro.’”189 Bush said, “’This case should be decided by a Florida family court, which will protect the best interests of Elián, not by a Clinton-Gore Justice Department whose record of putting politics ahead of the law does not inspire confidence.’”190 Callers to Miami Spanish-language radio stations “vowed to express their discontent with the Clinton-Gore administration at the voting booths this November.”191

On March 24, 2000, the attorneys for Elián’s family in Miami proposed that an independent arbitration panel handle the case, rather than appealing it in the U.S. courts, but Meissner objected.192 A letter from David J. Kline, of the Justice Department’s Office of Immigration Litigation, asked the Miami legal team for an expedited briefing schedule that would “shorten the appeals process to two to three weeks, rather than two to three months.”193 It threatened the Miami relatives that unless they agreed within 72 hours to expedite their court appeals, they would revoke the child’s parole and deport him.194 The Miami attorneys complied by filing motions with the 11th U.S. Circuit Court of Appeals requesting to schedule briefings and oral arguments.195

On March 27th, after the federal court of appeals responded that they would hear arguments on May 8th, INS Executive Associate Commissioner for Field Operations Michael A. Pearson sent a letter to Lázaro González threatening that unless he signed a pledge to surrender the boy if he lost the appeal, they would take custody of Elián in three days.196 Family spokesman Armando Gutiérrez denounced that federal authorities “have promised Cas-

190 Id.
191 Id.
196 INS Threatens to Revoke Parole Status for Elian by Thursday; Officials Call for Tuesday Meeting With Miami Lawyer, CNN (Mar. 28, 2000) [hereinafter INS Threatens to Revoke], available at http://www.latinamericanstudies.org/elian/threatens.htm, archived at http://perma.cc/E3PR-RGY2; Rick Bragg, Standoff Over Cuban Boy’s Fate Intensifies, N.Y. TIMES
tro they will send this kid back and that’s why they have to abide by their agreement.” La\'zaro was advised by his lawyers and his daughter not to sign such an open-ended guarantee. Marisleysis Gonz\’alez declared that if her family lost in court, “the only person they would turn the boy over to is his father, and only at their home in Miami.” L\’azaro and seven of his attorneys met with five INS lawyers in Miami on March 28 and insisted that psychologists should “determine whether the boy is to be transferred to the father” and the great-uncle would then turn over Eli\’an at a neutral location. The INS replied that “they would consider allowing psychologists to act in an advisory role to help make the hand-over easier for the boy. But they would not consider backing off the change in custody.” Florida Governor Jeb Bush, Miami-Dade Mayor Alex Penelas and Miami Mayor Joe Carollo then announced that no state or local authorities would intervene in the forced removal of Eli\’an.

A. A Monument to Eli\’an in Havana

Fidel Castro raised his propaganda campaign by erecting in front of the U.S. Interests Section in Havana a tall pedestal with a nine-foot bronze statue of patriot Jos\’e Mart\’\i holding a barefoot Eli\’an on his right arm while his other outstretched limb points a defiant accusatory index finger at the building. Billboards appeared throughout the capital depicting Eli\’an as one of a trio of Cuban heroes, along with Jos\’e Mart\’i and Ernesto “Che” Guevara. Castro meddled again in the custody process by announcing that he would send Juan Miguel Gonz\’alez and his family, a dozen of Eli\’an’s classmates, his teacher, the boy’s old school desk and a psychiatrist to Wash-
ington during the appeal process to hasten his “‘re-integration’” into Cuban society.205

The INS declared on April 3rd that if Juan Miguel González arrived in the U.S., they would “have little choice but to attempt to move Elián to the father’s custody.”206 Al Gore objected to Castro’s manipulation and said that “Congress should grant the boy and his family in Cuba permanent residency in the United States” so that “a U.S. court can take the custody case.”207 His words were “‘quite a blow’” at INS headquarters and it “was widely derided as a political stunt driven by Gore’s desire to carry Florida.”208 First Lady Hillary Clinton decried the action while Congress and public opinion were divided on the issue mostly along party lines.209 Democratic pollster Rob Schroth warned, “‘If Gore and the Democrats fumble the Elián issue, they can kiss the Cuban vote goodbye for a generation to come.’”210

On April 4th, Luis Fernández, a spokesman for the Cuban Interest Section in Washington, D.C., called Elián “‘a possession of the Cuban government.’”211 Under a 1978 Cuban law, children are raised with a “‘communist personality’” and “‘influences contrary to communist development’” are outlawed.212 The 1992 Cuban Constitution affirms in Article 38 that “the state promotes the patriotic and communist education of the new generations and the training of children, young people and adults for social life,” includ-


210 Silva, supra note 207.


212 Id.
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ing “military training.” 213 Article 62 denies civil liberties to anyone actively opposing the “decision of the Cuban people to build socialism.” 214

B. Elián’s Father Arrives in Washington, D.C. and Embraces Janet Reno

On April 6, 2000, Juan Miguel González, his wife and their infant son, accompanied by Greg Craig, and NCC leaders Joan Brown Campbell and Thom White Wolf Fassett, received a personal sendoff at Havana airport from Fidel Castro. 215 Craig had shown González an INS letter promising to “begin the process of transferring Elián to his father’s care” and a missive from Democrat Senator Patrick Leahy of Vermont saying that González “would not be left waiting” to obtain custody after arriving in America. 216 More than four months had passed since Elián’s father had first demanded his repatriation. After Castro authorized the family’s departure, they landed in a private jet in Washington, D.C., where González read a prepared “[m]essage to the American people,” denouncing being “unjustly and cruelly separated” from his son. 217 He praised the Communist leader who, “as a friend or brother has been next to me, advising me and supporting me in these days of pain and uncertainty.” 218

The exile family requested that Elián’s father meet them in Miami, free from the “intimidating pressure of the Castro government,” to discuss the boy’s future. 219 Craig stated Juan Miguel González “had no interest in traveling to Florida, but would await his son in Washington.” 220 Castro declared in Havana: “The battle for Elián has been won—in judicial terms, in legal terms, in political terms.” 221 That morning, more than fifty Cuban exiles carrying signs and a bullhorn loudly protested in front of Reno’s home in Miami to the accompaniment of “an endless blasting of horns by those driving past demonstrators.” 222


214 Id.


216 Id.; EISLER, supra note 97, at 237.


218 Id.; GUERRA, supra note 100, at 97.

219 Sands & Carter, supra note 215.


The next day, the C´ardenas family met with Reno, Meissner and Eric Holder, who assured Juan Miguel Gonz´alez that Eli´an would be turned over to him.223 According to Craig, “Reno seemed emotionally affected by the encounter and promised that he would get his son back. The Attorney General and Elian’s father then embraced.”224 Reno afterward released a 1,127-word communiqué announcing that federal officials would transfer the boy to his father the following week.225 She avoided the issue of reuniting both families and did not telephone the Miami relatives from her office for a rapprochement.226 Juan Miguel’s uncle, Delfín Gonz´alez, flew to Washington with nephew Alfredo Martell, and went to the Bethesda house of Fernando Rem´ırez de Estenoz, the chief diplomat of the Cuban Interests Section, where the C´ardenas family was staying. The visitors were turned away twice on consecutive days.227

Cuban American Representatives Ileana Ros-Lehtinen and Lincoln D´ıaz-Balart, Republicans of Florida, and Robert Men´endez, New Jersey Democrat, invited Juan Miguel Gonz´alez to a “parent-to-parent” private lunch on Capitol Hill to discuss the case but he ignored them.228 He likewise scoffed at a proposal by two Florida senators, Democrat Bob Graham and Republican Connie Mack, to arrange a meeting at a neutral site in Washington with his Miami relatives. Gonz´alez also turned down an invitation by Mayor Joe Carollo to visit Miami.229 House Majority Whip Tom DeLay, a Texas Republican, and other political leaders sent Eli´an’s father “a hand-delivered letter inviting him to a private lunch at the Capitol.” When he didn’t attend, it was speculated that his actions were being controlled by the Cuban government.230

On April 8th, L´azaro Gonz´alez wrote to Reno pleading for her “to arrange a private meeting, at a neutral location, between Juan Miguel and his wife and members of my family. This meeting should take place without any intervention whatsoever of any government official, theirs or ours, lawyers,
media or anyone else, only family.” He reminded Reno how two weeks earlier, Secretary of State Albright had denounced before the United Nations Human Rights Commission that “the Castro regime continues to suppress dissent, deny free speech, outlaw free assembly, and harass human rights advocates and others who seek independence of action and thought.”

Elián’s uncle again asked for her guarantee “that the government has no plans for, and does not intend to conduct, a raid on our modest home.” Reno did not respond and continued to make no effort to bring the families together. Holder declared the next day that “[w]e will do what is necessary to reunite father and son.”

C. A Florida Family Court Lacks Jurisdiction

On April 11th, Elián’s Miami relatives offered to meet with Juan Miguel at the home of Sister O’Laughlin or any other neutral place in Miami. They would bring Elián but wanted assurances that he would not be seized during the reunion. That day, mayors Penelas and Carollo met in Washington with Reno and Meissner and urged “the attorney general to arrange a meeting between Elián’s father and the relatives.” Their plea was ignored after the Cuban Interests Section announced that “conditions are not right” for a turnover in Miami. The Miami lawyers then filed a brief in Florida Family Court, asking Circuit Court Judge Jennifer Bailey for “a full hearing to bar Elián’s return to Cuba until his father’s fitness is considered.” The Justice Department “asked the court to dismiss the request, saying it has no jurisdiction to overrule federal immigration law” and reiterated that only the father could speak for the boy. Judge Bailey rejected the case for lack of

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232 Id.

233 Id.


236 Id.


238 Baró, supra note 235.

239 Id.

240 Id. note 235; Jay Weaver, Officials Ask Judge to Throw out Petition, MIAMI HERALD (Apr. 12, 2000), available at http://www.latinamericanstudies.org/elian/petition.htm, archived at http://perma.cc/5XB4-X4GG.
jurisdiction and rescinded the temporary order barring Elián’s removal from the county issued by Judge Rodríguez three months earlier.241

The next day, Reno ordered the Miami relatives to immediately surrender Elián. Lázaro González forebode, “they are preparing to take a child from my home, they are training federal agents to attack my house.”242 He feared that it could end like the deadly confrontations that Reno authorized at Ruby Ridge and Waco that killed more than twenty children. Retired FBI agent Clinton Van Zandt, the bureau’s chief hostage negotiator and veteran of the Waco standoff, warned that it would be “disastrous to stage a surprise operation to grab the boy at night.” He emphasized, “The last thing we need are American law enforcers going in like jackbooted Nazis or Castro’s storm troops . . . The government is going to have to show infinite patience.”243

Miami family lawyers then filed an emergency injunction in the 11th U.S. Circuit Court of Appeals, which quickly barred Elián from repatriation until his case was heard on May 11. In a 16-page decision, the judges opined that the government never interviewed Elián to examine if his “best interests are not necessarily represented by his father.” They also indicated that the boy could file an asylum application because the law set no limits on the age of asylum seekers.244

Thousands of supporters flocked to the González home in Little Havana including actor Andy García, singers Gloria Estefan and Willy Chirino, and musicians Arturo Sandoval and Albita. Mayor Carollo chastised Reno for not implementing a plan that he had discussed with her to have both families “move into separate houses in a federal compound somewhere to ease transition of Elián back to his father.” He assured that her “failure to adopt the plan meant that the Cuban government was dictating the terms of Elián’s hand-over.”245 The Castro regime, on the other hand, repeatedly announced

“that it does not plan to turn Elián into a political ‘trophy.’” On April 14th, Reno ordered the preparation of an armed raid to seize the child. Intelligence was gathered about the neighborhood, its streets, and activists near the home were photographed and profiled.

After Juan Miguel González arrived at the capital with his wife and their son, they remained mostly sequestered in the Cuban diplomatic residence. Their outings were “carefully selected by Craig and by Cuban diplomats.” González, at a news conference on the 19th, asked Americans to write or phone Clinton and Reno “to pressure them to reunite him with Elián.” He said it was “unconscionable to wait one day longer” and called on Reno to fulfill “her personal promises to him.” Elián’s father declared in a televised message to Clinton: “I was promised that I was going to be reunited with my son. Two weeks have gone by and it hasn’t happened . . . Don’t let them continue to abuse my son.” The president told reporters, “I think he should be reunited and in as prompt and orderly a way as possible.” After the Justice Department received more than 7,000 telephone calls, Reno issued a public statement saying that the case had “touched the hearts of virtually every American” and that the court ruling had no bearing on her intention that “Elián should be reunited with his father as soon as possible.”

The Miami family proposed taking Elián to a meeting with his father, within driving distance of their home, with “no preconditions, no government, no lawyers.” Vice President Gore endorsed the idea of a reunion,


John, supra note 7, at 50.


Statement by Attorney General Janet Reno Following, supra note 237.

urging the relatives to meet “without government officials or lawyers.” Craig insisted that “any meeting must begin with Juan Miguel being given custody of the boy.” He angrily called on the U.S. government for an immediate transfer of custody to avoid further “brainwashing” by the exile family. Craig issued a statement from Juan Miguel for Reno “to carry out the order, and her personal promises to him, immediately.” According to various news reports, Clinton “chided Reno for not ending the standoff sooner.”

On Wednesday, the 19th, the Attorney General ordered a predawn raid for Saturday and drills began of entry and escape routes, the house structure and aerial surveillance. She met on Good Friday, the 21st, with Juan Miguel González, who had no objection to the armed seizure of his son. After consulting with his attorney and Cuban officials, he agreed not to leave the country until the court of appeals injunction was settled. In preparation for the assault, INS agents asked Craig “if Elián had any allergies and what his blood type was.”

### D. All Night Negotiations

That day, the Miami lawyers faxed a document to Reno at 4:52 PM, proposing that the two families live together in a mutually agreed, neutral site in Miami-Dade County, under the protection of marshals, lawyers would be barred and only a neutral facilitator would have access to the families, until all legal proceedings were finished. The petition acknowledged: “We understand that you have transferred temporary custody of Elián to his father,” which attorney Aaron Podhurst, Reno’s friend and neutral advocate, said conceded the custody question. The families “would live together until Elián was comfortable transferring his primary affections back from the Miami relatives to his father.”

Miami attorney Roger Bernstein said the proposal “had to be presented to Greg Craig and Fidel Castro.”

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258 Viglucci, Acle & Robles, supra note 255.

259 Greene, supra note 10; John, supra note 7, at 55.

260 *Statement by Attorney General Janet Reno Following, supra note 237; Eisler, supra note 97, at 239.*

261 Greene, supra note 10.

262 *Id.*


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Department of Justice officials waited until Judge Moore, who ruled on Elián’s case, had left the Miami courthouse at 7:00 PM. They then went to the home of Magistrate Robert Rube, considered friendly to law enforcement, to obtain a search warrant to enter the González home and seize the child. Rube was handed an affidavit signed by INS Agent Mary Rodríguez purporting that Elián was being “concealed” in the house and had been “unlawfully restrained.” The document also indicated that James T. Spearman, INS deputy director of investigations, had ordered the arrest of Elián as “an illegal alien.” The magistrate’s warrant, allowing a nighttime seizure, was good for ten days.

Attorneys who later questioned the order said that it was “improperly issued because it is meant for use only when there is suspicion of a criminal violation, or violation of a direct court order.” Federal agents had no right to enter the residence of a third party, Lázaro González, to grab Elián. Harvard Law School Professor Laurence H. Tribe denounced the warrant as invalid: “It was not a warrant to seize the child. Elián was not lost, and it is a semantic sleight of hand to compare his forcible removal to the seizure of evidence, which is what a search warrant is for.” Constitutional law expert Alan Dershowitz, a Clinton ally, stated that this was “an end-run around the Constitution. What they did was improper and unlawful.”

African American syndicated columnist Deroy Murdock accused the Justice Department of violating Fourth Amendment restrictions against “unreasonable searches and seizures” by using an improper search warrant.

At 7:58 PM, Justice Department attorneys faxed Craig a proposal that the joint living arrangement would occur in Airlie House, a hotel in the Washington suburbs. Craig demanded separate quarters for the families and “an immediate custody transfer.” Three hours later, another proffer agreed to this demand. Craig, however, now insisted that the provision should not exceed one week. Reno spoke to President Clinton at midnight to update him on the negotiations. Two hours later, the Attorney General informed the White House chief of staff that “the talks were still going on” and the mes-


266 John, supra note 7, at 97; Seper, supra note 265.

267 Seper, supra note 265.

268 John, supra note 7, at 97; Seper, supra note 265.

269 Id.

270 John, supra note 7, at 97; Seper, supra note 265.

271 John, supra note 7, at 97; Seper, supra note 265.


274 DeYoung, supra note 263.
sage was relayed to the president. The Justice Department responded to Craig at 2:10 AM with a draft giving him “most of what he had demanded, including a 3:30 AM turnover of the boy to marshals at the federal courthouse in Miami.” Craig “complained that the one-week limitation was not included in another section, which allowed the Attorney General to direct the conditions of the transition period.” After the limitation was amended on the document, the draft was faxed to the Miami attorneys at 2:59 AM. Miami family attorney Carlos de la Cruz recalled, “Up until that point, I thought we had an agreement,” then suddenly Reno “starts introducing drastically different terms. But even so, we were willing to work with those terms.” An hour later, Reno told Podhurst on the phone “that time had run out.” Podhurst afterward said, “I do not agree that we weren’t close to a settlement. I believe everybody was acting in good faith . . . [a]nd I had believed we had made substantial progress.”

IV. FAMILY REUNIFICATION AT GUNPOINT

By 5:00 AM, the Miami lawyers had agreed to go along with the Washington plan and were pressing a sleepy Lázaro González to accept it. At the same time, an impatient Reno got President Clinton’s approval for “Operation Reunion,” a commando-style raid on Lázaro’s home by 151 heavily armed members of INS, U.S. Marshals and the El Paso-based Border Patrol Tactical Unit (BORTAC). Minutes later, Podhurst had Reno on one phone line and family lawyers Manny Díaz and Kendall Coffey on another in Elián’s home. Reno put them on hold when the raiders arrived in “three white vans, four sport utility vehicles and two pickup trucks.”

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275 Bill Clinton, My Life 906 (2004).
277 Id.
281 Manny Díaz was elected Miami mayor the following year. See Sue Anne Pressley, From Elian’s House to City Hall, WASH. POST (Nov. 15, 2001) available at http://www.latinamericanstudies.org/exile/diaz-elected.htm, archived at http://perma.cc/4GUZ-JX4K; Clymer, supra note 276; Tanfani, Kidwell & Greene, supra note 281.
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BORTAC agents “sprayed gas into the residence; broke down the front door with a battering ram and entered the residence without first announcing their presence; sprayed more gas; pointed guns at the occupants of the residence, threatening to shoot; shouted obscenities; and broke doors, furniture, and religious artifacts.”283 The attorneys, family members, and children in the house “were ingesting the gas” as the “agents corralled the frightened family inside at gunpoint” demanding the boy and threatening “‘[w]e’ll shoot you, we’ll shoot you.’”284 Agents held people in the backyard on the ground at gunpoint and threatened about fifty protesters behind police street barricades sixty-five feet away that they would shoot them if they moved.285

NBC cameraman Joaquín “Tony” Zumbado and freelance photographer Alan Díaz quickly ran into the house ahead of the federal agents. NBC soundman Gustavo Moeller was behind them outside when he was “hit with the butt of a weapon on the back of his head and fell to the ground bleeding.”286 Zumbado was pepper-sprayed and thrown to the living room floor by a kick from a raider who yanked and broke his camera cord. He told NBC’s David Bloom that agents “put their foot on my back and told me not to move or else they were going to shoot.”287 Zumbado saw “red dots from laser sights pinpointed at the foreheads of Lázaro and Marisleysis.”288 He denounced how “‘[t]he agents were physically and verbally abusive; they said every bad word in the book and kept me from doing my job.’”289

Díaz won a Pulitzer Prize for a searing photo showing a snarling BORTAC agent wearing a chin-strapped helmet, goggles, body armor, battle fatigues, jack boots and shooter’s gloves. He held with one hand a Heckler & Koch MP5 submachine gun that had a target light, a 30-round ammunition clip and the safety off. The weapon was pointed at Dalrymple and a terrified Elián who were embracing in a closet doorway.290 Dalrymple stated, “They ripped him out of my arms. He was screaming ‘Help me, help me.’”291 Weeks later, Díaz was still haunted by that “most awful cry you could ever

283 See González v. Reno, 325 F.3d 1228, 1232 (11th Cir. 2003).
284 Greene, supra note 10; DeYoung, supra <CITE _Ref288918756”>.
287 GUERRA, supra note 100, at 119; Murdock, supra note 273.
288 JOHN, supra note 7, at 87.
291 Pressley, supra note 285.
hear in your life” from Elián.292 His photo quickly “appeared over and over on television screens around the world.”293


A hysterical Elián was wrapped in a blanket by pistol-packing INS agent Betty Ann Mills, a former military policewoman and “avid runner,” and hustled out of the house wide-eyed, shrieking and crying.294 He was spirited away in a van with tinted windows driven by a masked man; he was then flown in a Marshals Service jet to his awaiting father at their temporary residence in Andrews Air Force Base near Washington, D.C.295 At a televised news conference that morning, Reno stated that she had “no regrets whatsoever” about authorizing the raid.296 The next day, Lázaro, Delfín and

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293 Vise, supra note 290.
Marisleyss González were turned away at the base gate when they arrived to deliver an Easter basket to Elián and were barred entry during three subsequent days. In contrast, Cuban officials, attorney Craig, and the Rev. Joan Brown Campbell and her granddaughter frequently visited Elián.297

Days later, an emotional Reno reiterated on the Oprah Winfrey Show before a friendly audience that she “had no regrets” about the raid, while President Bill Clinton, First Lady Hillary Clinton, Meissner, Holder and Craig staunchly defended her actions.298 Most Democrats backed the president’s decision. Public opinion on the use of force to seize Elián was 49% against and 48% in favor in an NBC News poll.299 Mexican-American INS agent Rick Ramírez, assigned to the periphery of the three-minute operation, affirmed that the excessive use of force was due to the “anti-Cuban and anti-Hispanic sentiment in the agency.”300 Attorney Dershowitz denounced that “For whatever reason the government chose not to seek a court order following an adversarial hearing, its actions confirm a dangerous precedent: that the executive branch of the government has the authority to break into a citizen’s home in a contested dispute without giving that citizen the opportunity first to present his side to a court for resolution of the dispute.”301 Judge Andrew Napolitano called the raid an “outrageous kidnapping” that “was constitutionally flawed, unlawful and repugnant to the language and spirit of the then three-day-old decision of the Eleventh Circuit that ordered Ms. Reno to keep Elián in the U.S. and denied her request for an injunction requiring Mr. González to turn the boy over.”302 Former INS Commissioner

UU. A six-hour live MSNBC TV report of the raid and its aftermath can be seen on YouTube at https://www.youtube.com/watch?v=MGUvGZq_Bc.


Gene McNary declared, “This is stooping to the level of Castro and Hitler.”

George Bush declared that the “chilling” photo of the frightened child being “removed from his home at gunpoint” was “not an image a freedom-loving nation wants to show the world.” He added that “Custody disputes are resolved in the calm of a courtroom, not in the terror of middle-of-the-night raids.”

Gore concurred: “I believe this issue should have been handled through a family court and with the family coming together.”

House Majority Whip Tom DeLay told NBC that the United States had for the time “taken the custody of a child out of the courts and put it into the executive branch . . . That is outrageous, it is unconstitutional.”

Florida Democrat Senator Bob Graham accused President Clinton of breaking a personal promise to him “that there would be no taking of this child during the night . . . It was a clear commitment which was violated.”

He denounced the raid as “absolutely intolerable, unnecessary, outrageous and has left a scar on this community and particularly a scar deep in the mind of this little boy, and, I suggest, a lot of other children as to what can happen in the middle of the night.”

Republican New York City Mayor Rudolph Giuliani declared that the big winner “was Fidel Castro. He’s been orchestrating this . . . Not only did the Clinton administration adopt Fidel Castro’s position, they’re now adopting his tactics.”

Castro praised President Clinton, Reno and Meissner, “adding that the Cuban government had passed along its full support for the raid before it was staged.” He called it “a day of glory for our people” and 400,000 Cubans were called out to a victory rally.
A. Street Protests and Counter-Protests

The violent removal of Elián sparked protests throughout Little Havana. The demonstrators blocked intersections and set 304 random trash fires in the streets, prompting 303 arrests for mostly minor offenses. No store looting or window breaking took place while shouts of “Al Gore will pay for this in November” resounded in the streets.312 Other protests occurred in Washington, D.C., Manhattan and Union City, N.J., that included blocking traffic in the streets and in front of the Lincoln Tunnel. Scores of Cuban Americans registered as Democrats went to the Miami-Dade elections office on Monday to switch political allegiance.313 Fifty-four Catholic priests from South Florida sent a letter of protest to President Clinton.314

Miami’s 800,000 member Cuban-American community protested the assault on the González home with a general strike on April 25 that shut down “large portions of the county.”315 More than 115,000 Miami-Dade public school students and some 4,000 teachers were absent. Thousands poured out onto the streets and gathered near landmarks waving Cuban flags or driving in honking caravans.316 The protest was joined by ten members of the Florida Marlins baseball team, including six players, as well as two Giants players and a coach, who did not dress for the scheduled game at Pro Player Stadium in Miami. Six other major league players and coaches in other cities skipped evening games.317 A dozen federal prosecutors and thirteen staff members at the U.S. Attorney’s office in Miami, not all of them Cuban Americans, protested by going to work dressed in black. They “felt betrayed” by Reno’s authorization of the raid after she “had assured them in an April 12 meeting that the Justice Department would not use force to reu-
nite Elián with his father.” The Cuban American Bar Association decried that the “raid was contrary to the democratic traditions of our great nation.” After the Castro regime announced that it had sent shipments of mango juice to Elián, Democrat Hialeah Mayor Raúl Martínez urged Cuban exiles to ship mango juice cans directly to Reno’s office in Washington to protest her “complicity” in Castro’s “continued lies.”

On April 25th, the Justice Department filed an 83-page brief with the 11th U.S. Circuit Court of Appeals arguing that the asylum application was not Elián’s doing and that it amounted to “a substantial intrusion into the realm of parental authority for a distant relative to be able to trigger government procedures concerning the parent’s 6-year-old son.” The Miami relatives responded with a legal request seeking access to Elián or the appointment of an outside guardian for him until the appeal was decided. Craig retorted on behalf of Elián’s father with a 21-page pleading before the court that only he could represent the boy in his pending asylum case and not the “intruder and uninvited meddler” Lázaro González. The three-judge panel denied all requests in deference to the full court hearing scheduled the following month.

Juan Miguel González and his family relocated on April 25th to Carmichael farm on the Wye Plantation, a secluded private compound seventy miles from Washington, D.C. on Maryland’s Eastern shore. Coast Guard launches were assigned to patrol the area. The State Department lifted the 25-mile travel restriction on ten Cuban diplomats to allow them to visit Elián. The Clinton Administration also authorized Fidel Castro to send an

325 Seper, supra note 178.
entourage consisting of Elián’s 10-year-old cousin, four of his Cárdenas schoolmates and their mothers, their teacher and a pediatrician, to join him for a fortnight and their visas were later extended for two more weeks. The group waved Cuban flags at the Havana airport when Castro bid them farewell. Elián’s grandmothers and his eight-year-old stepbrother were left behind. Rep. Lincoln Díaz-Balart charged that Elián was “being placed under a systematic program of brainwashing and it is being done on U.S. soil, under the protection of U.S. officials.”

On April 29, 2000, more than 100,000 marchers “of all ages and all nationalities” peacefully protested in Little Havana’s Calle Ocho against the armed removal of Elián. “We will remember in November” said one sign in reference to the presidential election. The protest was broadcast live only by Miami Spanish-language television stations, unlike the previous national coverage. A counter rally of 2,500 people in South Dade backing the Clinton Administration was organized by “an Army veteran and a self-described redneck.” It had a bizarre alliance of African Americans alongside Confederate flag wavers, white bearded motorcycle guys, teenagers with pierced tongues, fanatics holding Bibles aloft, and xenophobes with signs proclaiming “This is America, Speak English,” “America: Love it or Leave it” and “Janet Reno for President.” They denounced Cuban American politicians and called for the firing of Mayor Joe Carollo. Fidel Castro, in turn, wearing an Elián T-shirt, on May 1 led a march of hundreds of thousands of Cubans to a rally in front of the U.S. Interests Section where he condemned the “barbarous and cruel crime” of the boy’s “kidnapping” in America. During his speech, Castro answered his cellular telephone and told the crowd that it was Juan Miguel González calling to express solidarity with the
demonstration. A State Department annual report on terrorism issued that day continued to include Cuba as a state sponsoring terrorist activities.\textsuperscript{335}

\hspace{1cm} \textbf{B. Sedation and Communist Indoctrination}

On May 1, Craig urged the 11th U.S. Circuit Court of Appeals in a 17-page filing to dismiss Elián’s political asylum bid, claiming that lengthy proceedings would curtail the father’s “freedom to raise a family” and force him “to choose between his country and his son.”\textsuperscript{336} He stressed that Elián was illiterate and did not understand the asylum petition. The Miami lawyers submitted evidence that the boy would be deprogrammed “to repudiate his late mother and his stepfather” if returned to Cuba.\textsuperscript{337} The Communist indoctrination process on the sequestered boy had already begun. Elián’s pediatrician had a batch of Miltown, diazepam and Phenobarbital sedatives and tranquilizers confiscated from her upon arrival because she was not licensed to practice medicine in America. Republican Senator Bob Smith of Vermont denounced that Elián was being drugged.\textsuperscript{338} The indoctrination included dressing Elián in the tricolor Pioneers Youth Communist league uniform, daily joining his classmates in saluting the Cuban flag and singing the national anthem, ending with the shout: “Pioneers for Communism, we will be like Che [Guevara].”\textsuperscript{339} Critics have compared the Pioneers to the Hitler Youth. Child psychologist Dr. Marta Molina stated, “The oppression has already started.”\textsuperscript{340} Before the end of the month, Elián and his entourage were moved to the Rosedale estate, owned by the National Cathedral Foundation, in the Cleveland Park section in Washington, near Craig’s residence.\textsuperscript{341}

A CNN/USA Today poll in early May suggested that the Elián case had “no measurable impact” across the nation on the upcoming presidential


\textsuperscript{340} Lynch & Robles, \textit{supra} note 339.

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election. Al Cárdenas, chairman of the Republican Party of Florida, stated that “No one will vote based on Elián except for Cuban Americans,” who comprised eight percent of Florida voters. President Clinton was “concerned that it could cost Al Gore Florida in November” but did nothing about it. Brian Kennedy, a Republican political consultant indicated, “Ultimately, it’s a Florida issue. Some would suggest that if Gore can deny Bush Florida, Gore would be hard to beat.” The Miami Herald predicted that “The Elián vote in Florida could be enough to decide the election.”

On May 11th, the three judges of the 11th U.S. Circuit Court of Appeals met for less than ninety minutes to hear the Elián case. Edwin Kneedler, the deputy solicitor general of the U.S., argued that “only the father can speak for his son” since the boy is not old enough to understand his application for political asylum. Kendall Coffey, representing the Miami family that was in the courtroom, argued that “Elián would be paraded around Cuba, more a trophy than a boy growing up in his old life there, and his father would have little to say about the child’s life.” Craig countered that Juan Miguel González, who was not present, was not being manipulated by the Cuban government. He also questioned how INS could accept an asylum application filed by someone who did not have custody of the child. Coffey stated that Elián “was more than sufficiently competent to express his desire to invoke a chance to stay in this country.”

Judge Wilson reminded Coffey that the Supreme Court had ruled that an asylum seeker had to provide the following evidence: “Number One, that he has been a victim of persecution; secondly, that he holds a political opinion; thirdly, that his political opinion is known to his persecutors; and fourth, that the persecution has been or will be on account of his political opinion.” Kneedler stated that in the evidence submitted, six-year-old Elián had not expressed fear of persecution in Cuba; could not swear to the truth of the content of the asylum application; and that he was “was far below the

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343 Id.

344 Clinton, supra note 275.


346 Silva, supra note 342.


348 Id.

349 Id.


351 Id.
range of age suggested in the Polovchak decision.” Judge Edmondson noted that it was not uncommon for courts to rule that a child’s best interests override the rights of a parent, as in the case of parents who refuse their child a doctor’s care because of their religious beliefs.” He affirmed that in U.S. courts, “a wider variety of people can act as next of friend other than the natural parent, even if the natural parent is present.”

V. THE 11TH U.S. CIRCUIT COURT OF APPEALS DECISION

Edmondson wrote the unanimous decision issued on June 1st, ruling that “this case is about the discretion of the executive branch to make policy.” The court indicated that “the INS policy seems to implicate the conduct of foreign affairs more than any other” and worried that to the INS, a parent living “in a communist-totalitarian state is no special circumstance” for considering Elián’s asylum claim. The judges acknowledged “that Cuba does violate human rights and fundamental freedoms and does not guarantee the rule of law to people living in Cuba.” They admitted that Elián would be subjected to “re-education, communist indoctrination and political manipulation” if repatriated but that this was not “synonymous with persecution.” The court affirmed that Elián had “a substantial conflict of interest” with his father’s “demands that the child leave this country to return to a country with little respect for human rights and basic freedoms.” However, living in a communist-totalitarian state “does not constitute a special circumstance requiring the selection of a non-parental representative.”

While the INS policy did not harmonize perfectly with their own asylum interpretative guidelines, these were not law, and INS officials could make a “discretionary policy choice,” even if “it might be imperfect,” without judicial interference. Therefore, the court ruled that INS acted properly in denying Elián asylum and ordered that he stay in America pending appeal. Consequently, the “political exploitation” of a child as a cause for granting asylum to Elián under the 1998 INS Guidelines for Children’s Asylum Claims was a moot issue.

Janet Reno announced her pleasure with the decision and awaited its “final resolution so that Elián, his father and his family, may resume their

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352 Id.
353 Bragg, supra note 347.
354 Gonzalez v. Reno, 212 F.3d 1338, 1348 n.10 (11th Cir. 2000).
355 Id. at 1353.
356 Id. at 1355.
357 Id. at 1350.
358 Id. at 1356.
lives away from the scrutiny of the media." 360 Two weeks later, the Miami lawyers asked the full twelve-judge appeals panel to reverse the adverse decision. They cited a recent Supreme Court ruling that courts need not defer to an executive agency decision. The Justice Department then asked the court to shorten the process by which Elián could return to Cuba. 361 On June 19th, Cuba indefinitely postponed the upcoming migration talks with the U.S. citing its “preoccupation with the return of Elián González as the reason.” 362 Four days later, the appellate court refused to review the case again and ruled that its earlier order requiring Elián to stay in America would end in five days. 363

On June 26th, the Miami attorneys asked the U.S. Supreme Court to block Elián’s departure pending a quick formal appeal. They argued that Elián was denied “the absolute constitutional right to an asylum hearing five months ago.” 364 Two days later, the high court, in a sparse 26-word order issued at midday, declined to intervene. It reiterated the rulings of lower federal courts, upholding the tradition of sustaining the broad powers of the INS to enforce the immigration laws. 365 The Cárdenas family and their entourage immediately returned to a hero’s welcome in Cuba under live national television coverage. They were met at the Havana airport by a music band, Ricardo Alarcón, and hundreds of schoolchildren who waved Cuban flags, loudly sang the Cuban national anthem, and chanted, “Elián! Elián!” 366 The regime told citizens to “celebrate in their homes and neigh-

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Castro’s earlier promise “of a low key homecoming to save the boy more trauma” proved false.364 During the two months after Elián’s seizure, “3,185 Democrats in Miami-Dade County switched to another party affiliation—71 percent of them to the GOP.”369 Radio commentator Nina Pok Díaz forewarned that Cuban Americans would hold Vice President Al Gore “and other Democratic candidates accountable in the November elections.”370 The Miami Herald foresaw that the seven-month Elián saga had made it “difficult for Democrat Al Gore to count Florida in any electoral formula for victory in November.”371

CONCLUSION

The Elián case did not break new legal ground and it received extraordinary fast-track treatment by the courts. The federal courts agreed that the INS “acted reasonably and within its broad powers” in denying Elián an asylum hearing.372 It was the first time in history that “a Cuban refugee had been given a deferred inspection and the INS later decided to return the person to Cuba.”373 The INS ignored their own 1998 Guidelines for Children’s Asylum Claims by not interviewing Elián.374 The special procedure recommended by the Washington Post was never implemented. It was the first time that a large federal armed force seized a child in a custody case. Internationally, no government had ever before mobilized an entire nation to support its claim on a custody battle. Fidel Castro hailed the outcome as a national victory over American imperialism and vowed to continue the struggle. In contrast, during the previous three years, nearly ninety Cuban minors had arrived undocumented in the United States, and none were sent home involuntarily nor did Castro demand their return.375

368 Snow, supra note 34.
373 Carter, supra note 56.
374 Transcript of 11th Circuit, supra note 76.
Throughout the ordeal, the Clinton Administration negotiated from a
forceless position, intimidated by Castro’s threat of suspending the immigra-
tion accords and unleashing another massive exodus. It retracted its initial
commitment to follow standard custody procedure and resolve the situation
in a family court, sealing the boy’s fate. After secret negotiations with Cuba
ended the hostage crisis in Louisiana, the Clinton Administration denied
Elián an asylum hearing and rushed the process to repatriate him. President
Clinton never revealed what Castro gained in exchange for accepting the
return of the Mariel criminals and disavowed that any deal was made in
relation to the Elián case. The Clinton Administration afterward never op-
posed Castro’s demands and stopped responding to his anti-American rants.
The Communist leader was allowed to orchestrate the immigration process
during the custody battle, including rejecting the initial INS offer to give
Juan Miguel González legal custody of his son in Miami; permitting a sepa-
rate visit by the grandmothers; controlling the father’s departure for America
after four months; participating in the Good Friday negotiations with the
Miami family; approving the armed seizure of Elián; and giving extended
visas for the selected Cárdenas entourage.

The Clinton Administration adhered to Castro’s insistence that the Cár-
denas family never be allowed to meet with their Miami relatives, even after
Elián was reunited with his father. They also abided by Castro’s demand that
the case not go to a “corrupt” family court, where an impartial and experi-
enced person would make a decision based on the best interests of the
boy.376 Reno and Meissner ignored repeated pleas from the Miami family for
a reunion with their Cárdenas kin.377 The Justice Department disregarded
suggestions by South Florida mayors Penelas and Carollo on how to bring
both sides together.378 They also avoided a psychological evaluation of Elián,
involving his interactions with the entire family, as usually ordered by fam-
ily courts.379 Reno’s all-night negotiations by telephone and fax with a large
number of people, many tired and incoherent just before dawn, are not meth-
ods used by child custody professional negotiators and were therefore
doomed to fail.380 All negotiating proposals by the Miami family were
presented to Greg Craig and Fidel Castro for their approval.381 Although the
Clinton Administration was denouncing Cuba as a totalitarian regime that
violated human rights and sponsored terrorism, it had no qualms about re-
turning Elián to a nation that had legal possession of children and control of
their training.382 To protect Elián’s future, Cuban exiles appealed to the same

376 See Tamayo, supra note 15. 377 Baró, supra note 235. 378 Statement by Attorney General Janet Reno Following,
supra note 237. 379 Jay Weaver, Issue of asylum hearing is real dispute in Elian case, MIAMI HERALD
(June 29, 2000), available at http://www.latinamericanstudies.org/elian/issue.htm, archived at
http://perma.cc/L6VR-H5ZZ. 380 Weaver & Greene, supra note 278. 381 DeYoung, supra note 264. 382 Elian ‘a Possession’ of State, Cuba says, supra note 211; República de Cuba, supra
note 213.
moral “higher law” that 19th-century abolitionists preached against slavery sanctioned by the Constitution and the Supreme Court, while the Clinton Administration called for abiding by the rule of law.

Clinton and Reno did not honor their word against a night-time raid. They rushed to forcefully hand over Elián to his father by Easter to attain religious symbolism, favorable publicity, and comply with the pressing public demands and challenges from Castro, Juan Miguel González and his lawyer. Reno, after being chided by Clinton for faltering, obtained a dubious warrant to seize the boy. Although the instrument gave her ten days to act, she executed it within ten hours. The Attorney General lacked the “infinite patience” advised by retired FBI chief hostage negotiator Clinton Van Zandt. BORTAC agents violated the First Amendment rights of the NBC crew trying to film the home invasion.

The distressing photo of the six-year-old boy being snatched at machine gun point during a nighttime raid had a furious adverse effect. The New York Times editorialized that the operation was “precipitous” and that Reno “should have given the two branches of the González family more time to try to resolve the case amicably, and she should have applied more legal pressure on the Miami relatives before battering down their door to remove Elián.” Senate Majority Leader Trent Lott, a Mississippi Republican, stated that Reno never satisfactorily explained “why it was necessary to use force of that magnitude at a time when negotiations were apparently seriously under way.”

One crucial point neglected by the mainstream media, which largely echoed the Clinton Administration’s mantra that the boy belonged with the father, was that the U.S. government for decades arranged for defectors from Communist countries to flee with their families. In the Elián saga, no effort was made to bring the entire Cárdenas family together to America and away from the control of Cuban officials to privately offer them asylum. When Reno met with Juan Miguel González in her office, she did not telephone the Miami relatives to establish a rapport. The Cárdenas family and their entourage were sequestered and controlled by Cuban agents during their extended stay. The federal law enforcement tab for the Washington, D.C. visit was more than $2 million and it cost the city of Miami and Miami-Dade County more than $4 million.

383 DeYoung, supra note 308; Grech, supra note 318.
384 Seper, supra note 265.
385 Id.
386 Tanfani, supra note 243.
389 EISLER, supra note 97, at 238.
390 DeYoung, supra note 248; DeYoung, supra note 339.
Three months after Elián returned to Cuba, President Clinton and Fidel Castro shook hands and briefly talked at the United Nations Millennium Summit. It was the first and only time that Castro has ever shaken hands with a sitting American president. The London Times envisaged: “The rapprochement is fraught with political dangers for Vice President Al Gore’s presidential campaign, particularly in the key state of Florida.” In November 2000, angry Cuban Americans massively voted against Gore, whose presidential defeat narrowly hinged on Florida. He lost the state, and the election, by 537 votes and never again aspired to public office. The following month, President Clinton stated that the “seizure of Elián González might have cost the vice president ‘a lot of votes’ in Florida.” Clinton’s final day in office was marred by scandal and controversy stemming from his grand jury testimony and his 140 criminal pardons and various commutations of sentence.

When Janet Reno returned to her Miami home in 2001, the Cuban exile organization Vigilia Mambisa held weekly bullhorn protests with scores of hecklers in front of her residence. Reno ran for governor of Florida in 2002, but narrowly lost the Democratic primary to a candidate supported by
former President Clinton. Her announced memoirs never appeared and she remained a pariah among the Cuban community that formerly adored her.

Gregory Craig deserted the Clintons in 2008 to support Obama’s presidential candidacy and was afterward named White House counsel. When his ability to draft executive orders was challenged, Craig was forced to resign in less than a year.

Eric Holder was appointed Attorney General of the Obama Administration in 2009. He became the first Attorney General held in contempt of Congress on both civil and criminal grounds on June 27, 2012, for withholding thousands of documents related to the botched Fast and Furious gun operation that supplied more than 2,000 military weapons to Mexican drug cartels. After 57,524 unaccompanied and undocumented Central American minors crossed the U.S. border in the first six months of 2014, Holder created the Justice AmeriCorps program to provide them emergency legal representation and prevent their immediate repatriation. The children were released to sponsors and allowed to enroll in public schools. No effort was made to return them to their parents.

In September 2014, Holder resigned his post after a federal judge ruled that the contempt of Congress charge against him could proceed in court. He later said that his only regret was authorizing a subpoena in 2010 for the email records of Fox News reporter James Rosen and calling him a “criminal co-conspirator.” In probing leaks
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to the press, Holder had also obtained “two months’ worth of phone records for Associated Press employees.”

Reno had hoped that Elián would “live a normal life without television cameras and the world in his face,”

that the boy and his father would “resume their lives away from the scrutiny of the media,”

and that she would see Elián again to talk about “himself and what his interests are.”

Juan Miguel González returned to Havana and said forcefully that “he never wants to see a camera pointed at his son again.”

Castro had promised Juan Miguel that once Elián returned home, the child would “disappear from the limelight.”

However, the promise was never kept and Juan Miguel made no further objection after his son became an icon of the revolution. Elián frequently appeared at key annual Cuban national rallies on the dais with Fidel Castro wearing political-slogan T-shirts and Communist Youth uniforms. The Cárdenas municipal museum created a “Hall of Elián” wing where he and his classmates visited weekly to use the computer center.

The Cárdenas family changed its phone number and never again communicated with its Miami relatives.

The regime built a new home for them with state security neighbors guarding the entrance. In 2003, Elián’s father, who Castro had decorated with a national hero medal, won a seat in Cuba’s National Assembly after running unopposed.

Two years later, 11-year-old Elián read a prepared speech “for the entire world” before 5,000 people at the Anti-Imperialist Platform demanding the release of five Cuban spies imprisoned in the United States.

In 2006, Fidel Castro’s ailing health forced him to hand over power to his brother Raúl, who assumed the presi-

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407 Reno Calls for Speedy Resolution, supra note 123.

408 Statement by Attorney General Janet Reno on the 11th, supra note 360.


414 Bauzá, supra note 412.


On December 3, 2013, 20-year-old Elián was interviewed in Quinquenio de Luz, the University of Matanzas journalism student blog. He claimed that he would have been exploited in America, and that “[i]n Cuba, I enjoy freedoms I would be denied in the United States.” He blamed the United States for “claiming many lives, my mother’s included, with the Cuban Adjustment Act.” Elián acknowledged that Fidel Castro constantly watched over him and attended all of his birthday parties: “He would give me good advice, congratulate me.” Elián still had a team of bodyguards assigned to him since the age of six, “out of fear of reprisals from imperialism.” He affirmed that “Fidel Castro is like a father to me. I don’t profess to have any religion, but, if I did, my god would be Fidel Castro... no one has done more for world peace than he has. That’s why I believe that, more than a father to me, he ought to be considered a father by the whole world.” Elián’s political exploitation, lack of freedom, Communist indoctrination, and control by Fidel Castro, forewarned by his Miami family, Sister O’Laughlin, Charles Krauthammer, and Dr. Marta Molina, was now complete.\footnote{El Joven Elián González, QUINQUENIO DE LUZ (Dec. 2, 2013), available at https://quinqueniodeluaz.wordpress.com/2013/12/02/el-joven-elin-gonzalez/, archived at https://perma.cc/LU33-PAX7; English translation at http://www.havanatimes.org/?p=100439, archived at http://perma.cc/BWX5-XKGS.}